

amended because, as discussed more fully below, it is believed that the rejected base claims are allowable.

Applicants respectfully traverse the rejection of claims 1-7, 10, 12 and 20. It appears that the rejections have been maintained based on a misunderstanding of some of the arguments presented in Applicants' prior Response (filed under a certificate of mailing dated November 6, 2003) and, further, a mischaracterization of the cited references.

More specifically, the Office Action states the "it is noted that the features upon which Applicant relies (i.e., the flow spaces completely surround each of the tubes) are not recited in the rejected claim(s). However, Applicants did not make such an argument. Rather, Applicants argued that the references relied on in the rejection, Tholen and Schroder, had flow spaces that completely surrounded each of the tubes as opposed to having flow spaces located between the points of abutment of the tubes with each other or with the salt case as recited in independent claim 1. Thus, the Office Action incorrectly attributes a feature that Applicants identified in connection with Tholen and Schroder as being identified in connection with the claims. As discussed fully in Applicants' misconstrued prior Response (which arguments are adopted herein by reference to the Response), both independent claims, claims 1 and 20, specify that the flow spaces exist between the runs and specifically

between the points of abutment of the runs with other of the runs and the salt case. This is not shown or suggested by Tholen and Schroder taken alone or together. For this reason alone, the rejection of claims 1-7, 10, 12 and 20 is improper and should be withdrawn.

Next, the present Office Action states that, contrary to Applicants' assertion, "Tholen does have runs that has six contact points with other runs or with the salt case with there being one of the flow spaces between each pair of adjacent contact points (see Figure 3a)." However, this assertion in the present Office Action ignores the discussion extending from the last two lines of page 2 to the first two lines of page 3 of Applicants' prior Response wherein it is explained that it is the outer fin constructions 8, 8.1 of Tholen that are abutting in Figs. 3a-3c, rather than the tubes 7 of Tholen as recited in the rejected claims. A thorough discussion of this issue was provided in Applicants' prior Response and is adopted herein by reference. For this additional reason alone, the rejection is improper and should be withdrawn.

Next, in response to Applicants' arguments regarding claim 12 that Tholen and Schroder do not show or suggest an outer jacket surrounding the salt case in spaced relation to define an insulating space between the salt case and the outer jacket, the Office Action asserts that Tholen does show an outer jacket surrounding the salt case in spaced relation and refers to column

6, lines 1-10. A review of this material in the Summary section of Tholen reveals that Tholen is describing a double walled construction wherein the active medium is "accommodated in the intermediate space of the double walls." This structure is described more fully in Tholen in connection with Figures 10c, 10d, 11a, 11b and 11c. It should be clear that if the "intermediate space" is filled with the active medium, it is not an insulating space as recited in claim 12. To overcome this clear shortcoming of Tholen, the Office Action attempts to assert that the structural recitation of "an insulating space" between the salt case and the outer jacket is an intended use of the claimed invention. This assertion is an improper reading of extremely clear structural claim language and is unsupported by any canon of claim construction. Clearly, the recitation of "an insulating space" is a structural limitation and not an "intended use". Furthermore, in this same section, the Office Action asserts that if the prior art structure is capable of performing the intended use, then it meets the claim. In this case, while the recitation in the claim is not an intended use, it is clear that the structure shown in Tholen cannot operate as an insulating space because it includes the active medium therein. Accordingly, for the additional reasons above alone, the rejection of claim 12 is improper and should be withdrawn.

In response to Applicants arguments regarding claim 10 that Schroder and Takahashi fail to disclose or suggest baffles, the Office Action argues that baffles can be broadly interpreted to cover the metal nets disclosed in Takahashi. Applicants respectfully submit that no one skilled in the art would interpret the term "baffle" as reading on the metal nets of Takahashi. More importantly, the claims are to be interpreted in light of the specification of the application and the Office Action's overly broad reading is completely contrary to the representation of the term "baffle" in the specification and claims. Accordingly, for this additional reason alone, the rejection of claim 10 is improper and should be withdrawn.

Additionally with respect to claim 10, Applicants in their prior Response noted that, even if one were to take an overly broad interpretation of baffle as including the metal nets of Takahashi, the metal nets 3 of Takahashi do not extend through the matrix between the runs are recited in claim 10. This point is neither acknowledged nor addressed in the present Office Action. For this additional reason alone, the rejection of claim 10 is improper and should be withdrawn.

Although not discussed in Applicants' prior Response, the rejection of claims 4 and 5 as unpatentable over Tholen in view of Tsunekawa JP 63-57855 is improper because the proposed combination fails to disclose all of the

features of claim 4, as implicitly acknowledged by the rejection of claim 1 based on Tholen in view of Schroder. More specifically, claims 4 and 5 depend from claim 1 and accordingly include all of the limitations stated in claim 1. In rejecting claim 1 as unpatentable over Tholen in view of Schroder, the Office Action acknowledges that Tholen fails to disclose a phase change material that is sealed within at least one tube, and attempts to overcome this shortcoming through the use of Schroder. However, in rejecting claims 4 and 5, there is no reference relied on for the feature (a phase change material that is sealed within at least one tube) that the Office Action admits is not shown in Tholen. Tsunekawa JP 63-57855 is no help in this regard because its pipes (13) are simply hollow tubes that increase the surface area for heat transfer, as described in the English language Abstract. Accordingly, the rejection of claims 4 and 5 is improper because Tholen and Tsunekawa do not show or suggest all of the elements of the invention. For this reason alone, the rejection of claims 4 and 5 should be withdrawn and the claims allowed.

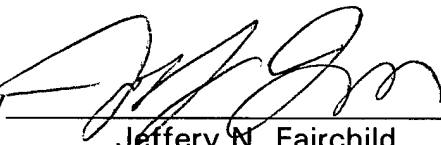
Furthermore, with respect to claims 4 and 5, it should be noted that Tsunekawa JP 63-57855 is mischaracterized as showing tubes brazed within a salt case, when in fact the tubes (13) of Tsunekawa are not brazed within a salt case, but rather a gas conduit. Because of this, there is absolutely no suggestion for the proposed combination because there would be no reason

to take the unrelated tubes (13) in a gas conduit of Tsunekawa and apply them to the structure of Tholen. For this additional reason alone, the rejection of claims 4 and 5 is improper and should be withdrawn.

In view of the foregoing, Applicants respectfully request reconsideration of the objection to claim 8 and rejections of claims 1-7, 10, 12 and 20, and allowance of the case.

Respectfully submitted,

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